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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/506,808	02/18/2000	Masakatsu Mori	ASA-672-02	8316
24956 7590 11/20/2007 MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C. 1800 DIAGONAL ROAD SUITE 370 ALEXANDRIA, VA 22314			EXAMINER GART, MATTHEW S	
			ART UNIT 3625	PAPER NUMBER
			MAIL DATE 11/20/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/506,808

Applicant(s)

MORI ET AL.

Examiner

Matthew S. Gart

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 34-73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34-73 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Prosecution History Summary***

Claims 1-33 have been cancelled.

Claims 34-77 are pending in the instant application.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 34-51, 54-57, 60-63, 66-69 and 72-77 are rejected under 35 U.S.C. 102(e) as being anticipated by Ausubel (U.S. Patent No. 5,905,975).**

Referring to claim 34. Ausubel discloses an auction method of determining a successful bidder, the auction method being executed in a server computer connected with a plurality of client computers via a network, each client computer belonging to a respective bidder (Ausubel: Fig. 1), the auction method comprising the steps of:

- a) transmitting, from the server computer, information on a product to be auctioned to the plurality of client computers via the network (Ausubel: column 16, lines 25-34);
- b) receiving, in the server computer, price information for determining a price that a bidder thinks acceptable to pay for the product from each of the plurality of client computers via the network (Ausubel: column 16, lines 25-34);

c) judging, in the server computer, whether a current auction price is equal to or lower than the price that the bidder thinks acceptable to pay, for each bidder

(Ausubel: column 16, lines 25-34);

d) determining, in the server computer, each remaining bidder who has sent the price information by which it is judged that the current auction price is equal to or lower than the price in step c) (Ausubel: column 16, lines 35-45);

e) judging, in the server computer, whether there is more than one remaining bidder as a result of said determining in step d), wherein a state in which there is more than one remaining bidder as a result of said determining in step d) is defined as a competitive state (Ausubel: column 16, lines 35-45); and

f) in response to a judgment in step e) that a competitive state occurs, increasing the auction price by a predetermined value and repeating steps c), d), and e) (Ausubel: column 16, lines 25-45).

Referring to claim 35. Ausubel further discloses an auction method wherein the price information includes a desired price with which a bidder desires to purchase the product and an acceptable price which the bidder accepts to pay in addition to the desired price (Ausubel: column 16, lines 25-45).

Referring to claim 36. Ausubel further discloses an auction method comprising the steps of:

- h) determining, in the server computer, an abandoned bidder who sent the price information by which it is judged that the current auction price is higher than the price in step c) (Ausubel: TABLE 1A); and
- i) excluding the abandoned bidder (Ausubel: TABLE 1B).

Referring to claims 37-39. The limitations of claims 37-39 closely parallel those of claims 34-36. Claims 37-39 are rejected under the same rationale as set forth in claims 34-36.

Referring to claims 40-44. The limitations of claims 40-44 closely parallel those of claims 34-36. Claims 40-44 are rejected under the same rationale as set forth in claims 34-36.

Referring to claims 45-49. The limitations of claims 45-49 closely parallel those of claims 34-36. Claims 45-49 are rejected under the same rationale as set forth in claims 34-36.

Referring to claim 50. Ausubel further discloses an auction method wherein a plurality of products are auctioned and a plurality of successful bidders are determined in the auction method (Ausubel: column 25-26, "Example Six of the Invention's Application).

Referring to claim 51. Ausubel further discloses an auction method wherein the server computer holds the predetermined value (Ausubel: column 25-26, "Example Six of the Invention's Application).

Referring to claim 54. Ausubel further discloses an auction method wherein, in the step e), whether the competitive state occurs or not is determined based on the amount of products to be auctioned and the sum of the amounts of products that the bidders desire to purchase (Ausubel: column 25-26, "Example One of the Invention's Application).

Referring to claim 55. Ausubel further discloses an auction method, wherein, in the step e), if the total of (1) the sum of minimum desired amounts of bidders who are included in the bidders having a nonzero desired amount and who do not purchase for an amount less than a minimum desired amount, (2) the number of bidders each having a minimum desired amount (Ausubel: column 25-26, "Example One of the Invention's Application).

Referring to claim 56. Ausubel further discloses an auction device wherein a plurality of products are auctioned and a plurality of successful bidders are determined (Ausubel: column 25-26, "Example One of the Invention's Application).

Referring to claim 57. Ausubel further discloses an auction device further comprising means for holding the predetermined value (Ausubel: column 25-26, "Example One of the Invention's Application).

Referring to claims 60-63. The limitations of claims 60-63 closely parallel those of claims 54-57. Claims 60-63 are rejected under the same rationale as set forth in claims 54-57.

Referring to claims 66-69. The limitations of claims 66-69 closely parallel those of claims 54-57. Claims 66-69 are rejected under the same rationale as set forth in claims 54-57.

Referring to claims 72-73. The limitations of claims 66-69 closely parallel those of claims 54-57. Claims 72-73 are rejected under the same rationale as set forth in claims 54-57.

Referring to claims 74-77. The limitations of claims 74-77 closely parallel those of claims 54-57. Claims 74-77 are rejected under the same rationale as set forth in claims 54-57.



***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 52-53, 58-59, 64-65 and 70-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausubel (U.S. Patent No. 5,905,975) in view of Fisher (U.S. Patent No. 5,835,896).**

Referring to claims 52-53, 58-59, 64-65 and 70-71. Fisher discloses an auction method comprising the steps, in a server computer, of:

reducing an auction price if no bidder exists (Fisher: column 11, lines 43-64);  
checking whether at least one bidder exists (Fisher: column 11, lines 43-64),  
determining the existing bidder as a successful bidder if one bidder exists, and  
further reducing the auction price if no bidder exists and repeating the checking and succeeding steps (Fisher: column 11, lines 43-64).

It would have been obvious to one of ordinary skill in the art to have modified the method already disclosed by Ausubel to have included the method as disclosed in Fisher in order to achieve sales volume goals (Fisher: column 11, lines 43-64).

***Response to Arguments***

Applicant's arguments filed 9/10/2007 have been fully considered but they are not persuasive.

The attorney argues that Ausubel '975 is not prior art to the present application. The attorney further argues that provisional application Nos. 60/009,979 appears to be in error, in that this provisional application is to applicants Fathman et al, and relates to subject matter entirely different from the system and method of executing an auction disclosed by Ausubel '975.

The Examiner notes, Ausubel '975 contains a certificate of correction (see Appendix A) containing the following information:

Title page, Item [60], change "Provisional application No. 60/009,979" to ---  
Provisional application No. 60/009,679---.

Provisional application No. 60/009,679 includes proper 35 U.S.C. 112 first paragraph support for the subject disclosed in 09/506,808, and predates the filing of the instant application.

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***Examiner's Comments***

The finality of the previous office action was withdrawn due to the Examiner unintentionally neglecting to treat newly submitted claims 74-77.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew S. Gart whose telephone number is 571-272-3955. The examiner can normally be reached on M-F, 9-6.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MSG  
Primary Examiner  
AU 3625



MATTHEW S. GART  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3600

# **APPENDIX A**

UNITED STATES PATENT AND TRADEMARK OFFICE  
**CERTIFICATE OF CORRECTION**

PATENT NO. : 5,905,975  
DATED : May 18, 1999  
INVENTOR(S) : Ausubel

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Title page, Item [60], change "Provisional application No. 60/009,979" to ---Provisional application No. 60/009,679---.

Col. 1, line 8, change "Ser. No. 60/009,979" to ---Ser. No. 60/009,679---.

Signed and Sealed this  
Twenty-eighth Day of March, 2000

Attest:



Attesting Officer

Q. TODD DICKINSON

Commissioner of Patents and Trademarks